

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES of AMERICA,

Plaintiff,

v.

PHILLIP SOMERVILLE,

Defendant.

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Crim. No. 03-12 (JAG)

ORDER

GREENAWAY, JR., U.S.C.J.*

This matter comes before this Court on the Motion for Return of Property, pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure (Docket Entry No. 51), filed by Phillip Somerville (“Defendant”). Defendant seeks return of two items of property – \$180.00 and a set of keys. On March 20, 2002, Defendant asserts that these items were allegedly seized from the Warren County Sheriff’s Office in Phillipsburg, New Jersey, by a United States Marshal conducting a search of his person. (Mot. For Return of Seized Property 1.)

Rule 41(g) provides that “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” FED. R. CRIM. P. 41(g). “Property seized by the government as part of a criminal investigation ‘must be returned once criminal proceedings have concluded, unless it is contraband or subject to forfeiture.’”

United States v. Albinson, 356 F. 3d 278, 280 (3d Cir. 2004) (quoting United States v.

* Sitting by designation on the District Court.

Chambers, 192 F. 3d 374, 376 (3d Cir. 1999)). Following the conclusion of criminal proceedings, the burden is on the Government “to demonstrate that it has a legitimate reason to retain the seized property.” Albinson, 356 F. 3d at 280 (citing Chambers, 192 F.3d at 377).

The Return of Property Form, filed as an exhibit to the Government’s response to Defendant’s motion, indicates nine items were seized on March 20, 2002. Although cash, totaling \$103.96 was seized from Defendant, a set of keys is not among the items listed.¹ Since neither the set of keys, nor cash totaling \$180 is in the possession of the Government, it is impossible for the Government to return these items to Defendant. Therefore,

IT IS on this 29th day of March, 2010,

ORDERED that Defendant’s Motion (Docket Entry No. 51), seeking return of \$180.00 and a set of keys, is DENIED; and it is further

ORDERED that the Government shall return any of Defendant’s property that is in the Government’s possession; and it is further

ORDERED that a copy of this Order be served on all parties within seven (7) days of the date of entry of this Order.

S/Joseph A. Greenaway, Jr.
JOSEPH A. GREENAWAY, JR., U.S.C.J.
(Sitting by designation on the District Court)

¹ The Government does not object to the return of the money in its possession. This Court shall order that the Government turn over \$103.96 to Defendant.